

REMARKS

Claims 1-5 and 7-11 are pending in the present application. No additional claims fee is believed to be due. Claims 1, 7 and 10 have been amended to more specifically characterize the invention. Support for the amendments is found at: page 3, lines 29-32 to page 4, lines 1-3; and page 4, lines 17-29.

Rejection Under 35 USC 102(b)

The Examiner has rejected Claims 1-5 and 7-11 under 35 USC 102(b) as being anticipated by Peacock (U.S. Patent No. 5,272,003). Applicants respectfully traverse this rejection. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131.01 citing *Verdegaal Bros. v. Union Ind. C. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Peacock does not set forth each and every element of Applicants' claim limitations, and cannot therefore anticipate the claimed invention. Specifically, the presently amended claims require an isotacticity of more than 15% of [mmmm] pentad concentration. Since Peacock requires syndiotactic polypropylene with 93% racemic placements, Peacock would necessarily require an isotacticity of no more than 7% of [mmmm] pentad concentration. In light of this requirement, Applicants contend that the claimed invention is not anticipated by Peacock and request that the rejection be withdrawn.

Rejection Under 35 USC 103

Claims 1-5 and 7-11 have been rejected under 35 USC 103(a) as being unpatentable over Waymouth et al. (U.S. Patent No. 5, 594,080) in view of each Sawyer et al. (U.S. Patent No. 5,672,415) and Peacock (U.S. Patent No. 5,272,003) independently. Applicants respectfully traverse these rejections.

In order to establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. Applicants assert that Waymouth et al., in view of each Sawyer et al. and Peacock independently, does not meet these criteria.

First, Waymouth does not teach or suggest all of the claim limitations of the present invention. Waymouth Examples 13-23 describe propylene polymers comprising alternating
Page 5 of 7

stereoblock sequences comprising a meso pentad fraction of less than 60%. The Examiner concludes that these Waymouth polymers necessarily fall within the meaning of "having one phase of molecules all of which exhibit a similar stereochemical configuration" as per present independent Claims 1, 7 and 10. Applicants respectfully disagree with the Examiner's conclusion for the following reasons. The ligands of the Waymouth catalyst can freely rotate around the zirconium atom in the center of the corresponding metallocene. The Waymouth catalyst may therefore be present in a variety of different configurations. As a result, use of the Waymouth catalyst results in the synthesis of polymer chains with differing stereochemical configurations. Thus, the polymers synthesized using the Waymouth catalyst are a fractionable mixture of various different polymers and not homopolymers which have "one phase of molecules all of which exhibit a similar stereochemical configuration". In contrast, the polymers of use in the instant invention *must* be homopolymers in order to provide reliable fibrous web materials. It is therefore respectfully submitted that the present invention is not obvious in light of Waymouth, since the reference fails to teach or suggest an essential element of the present invention.

Second, there is no suggestion or motivation in the art to combine Waymouth with either Peacock or Sawyer in order to make an elastic fibrous web material from the polyolefinic homopolymers of the present invention. Peacock purports to teach the production of polypropylene fibers from syndiotactic polypropylene with 93% racemic placements which, as discussed *supra*, necessarily have an isotacticity of no more than 7% of [mmmm] pentad concentration (Example 1, col. 7, lines 36-49), whereas Sawyer et al. purports to teach the production of air bonded spunbond fiber web from filaments containing ethylene and propylene components (Example 1, col.8, lines 9-56). Neither of these references taken alone or in combination acts as a suitable starting point for one of ordinary skill in the art of forming polypropylene fibers and bonded webs who is undertaking to making elastic fibrous web materials from a polyolefinic homopolymer having one phase of molecules all of which exhibit a similar stereochemical configuration and having an isotacticity of less than 60% and more than 15%. In addition, it should be noted that one of ordinary skill in the art of making fibrous web materials is not identical to one of ordinary skill in the art of metallocene catalyzed synthesis of polyolefinic homopolymers having one phase of molecules all of which exhibit a similar stereochemical configuration.

Applicants submit that the present claims as amended are not *prima facie* obvious in light of Waymouth in view of Peacock or Sawyer et al. Therefore, Applicants request withdrawal of the §103 rejections.

Appl. No. 10/089,341
Atty. Docket No. CM22J0MQL
Amdt. dated February 10, 2004
Reply to Final Office Action of October 22, 2003
Customer No. 27752

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-5 and 7-11.

Respectfully submitted,
Rieger et al.

By Angela Marie Stone
Angela Marie Stone
Attorney for Applicants
Registration No. 41,335
(513)634-9397

February 10, 2004
Customer No. 27752